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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMON RIVERA; CURTIS BANTA;
YONKMAN CONSTRUCTION, INC.; PARAS
HOMES, LLC; CONDRON HOMES, LLC;
GARCO CONSTRUCTION, INC.; ARLINGTON
360, LLC; HUSEBY HOMES, INC.; SPOKANE
HOME BUILDERS ASSOCIATION;
WASHINGTON STATE ASSOCIATION OF UA
PLUMBERS, PIPEFITTERS AND HVAC/R
SERVICE TECHNICIANS; LOCAL 32 OF UA
PLUMBERS, PIPEFITTERS AND HVAC/R
SERVICE TECHNICIANS; WASHINGTON
AND NORTHERN IDAHO DISTRICT
COUNCIL OF LABORERS; CITIZEN ACTION
DEFENSE FUND; NATIONAL PROPANE GAS
ASSOCIATION; AVISTA CORPORATION;
CASCADE NATURAL GAS CORPORATION;
and NORTHWEST NATURAL GAS
COMPANY,

Case No. 2:24-cv-00677-KKE

**PLAINTIFFS' INITIATIVE 2066
SUPPLEMENTAL BRIEF**

18 Plaintiffs,
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20 v.
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22 KJELL ANDERSON, JAY ARNOLD, TODD
BEYREUTHER, JUSTIN BOURGAULT,
DAIMON DOYLE, TOM HANDY, ANGELA
HAUPT, ROGER HEERINGA, MATTHEW
HEPNER, CRAIG HOLT, TYE MENSER,
BENJAMIN OMURA, PETER RIEKE, KATY
SHEEHAN, in their official capacities as
Washington State Building Code Council
Members; and BOB FERGUSON, in his official
capacity as Attorney General of Washington,

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26 Defendants.
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1 CLIMATE SOLUTIONS; THE LANDS
 2 COUNCIL; SIERRA CLUB and
 3 WASHINGTON PHYSICIANS FOR
 4 SOCIAL RESPONSIBILITY,

Defendants-Intervenors.

5 Pursuant to the Court’s November 22, 2024 Minute Order, Plaintiffs “address[] the impact,
 6 if any, of the passage of Initiative 2066 on the issues presented in this case and/or the pending
 7 motion to dismiss.” See Dkt. 55.

8 Defendants appear poised to insist on maintaining the Energy Code, despite the voters’
 9 adoption of Initiative 2066. To be sure, Initiative 2066 dooms the Washington State Energy Code
 10 (“Energy Code”) presently in effect—the same Energy Code Plaintiffs challenge here—and “[a]
 11 statutory change . . . is usually enough to render a case moot.” *Maldonado v. Morales*, 556 F.3d
 12 1037, 1042 (9th Cir. 2009). But that is true only when the defendant concedes the effect of the
 13 changed law on its actions. *See Rupe v. Wood*, 93 F.3d 1434, 1438 (9th Cir. 1996) (addressing an
 14 affirmative representation by defendant that changed law would apply to plaintiff); *GEO Grp., Inc.
 15 v. Inslee*, 702 F. Supp. 3d 1043, 1051 (W.D. Wash. 2023) (addressing defendant’s concession that
 16 a Ninth Circuit opinion invalidating a California law also invalidates a Washington law). Here, in
 17 contrast, Defendants have made no such concession.

18 The Building Industry Association of Washington requested that the State Building Code
 19 Council (“SBCC”) comply with Initiative 2066 by undertaking emergency rulemaking to create a
 20 code complying with the Initiative. *See* Building Industry Association of Washington Letter to
 21 SBCC, (Nov. 13, 2024), <https://sbcc.wa.gov/sites/default/files/2024-11/241113%20BIAW%20Letter%20RE%20I-2066.pdf>. The SBCC rejected that request. Indeed, the SBCC
 22 went even further and expressed skepticism that Initiative 2066 impacts the current Energy Code
 23 at all. SBCC Special Council Meeting – November 22, 2024, 1:35:44 – 1:36:07,
 24 <https://www.youtube.com/watch?v=uKJ82Cey31M> (adopting a motion stating the SBCC will
 25 “keep[] existing 2021 energy code in effect until by this process or directed otherwise by a court”);
 26 SBCC Council Meeting – November 15, 2024, 5:55, <https://www.youtube.com/>

watch?v=tNUqgR2np_M (slide presented by SBCC Energy Code Technical Advisory Group Chair Kjell Anderson stating that “[t]he energy codes may already comply with I-2066”). The result is that the Energy Code amendments remain in force and continue to inflict harm on Plaintiffs during the pendency of this action. This leaves a live issue. *See* Dkt. 47 at 16-17; Dkt. 52 at 14-17.

Here, Plaintiffs seek relief under the Energy Policy and Conservation Act (“EPCA”). *See* Dkt. 47 at 30. The EPCA basis for challenging the Energy Code amendments is unaffected by the passage of Initiative 2066 because the Energy Code amendments remain preempted by EPCA. Accordingly, this EPCA-based challenge remains reviewable, regardless of whether there is also a state-law defect in the Energy Code.¹ And this Court remains capable of granting relief to alleviate Plaintiffs’ harm.

In sum, Initiative 2066 has no effect on the EPCA-based challenge Plaintiffs are pursuing in this case. EPCA renders the Energy Code unlawful regardless of whether Initiative 2066 also does so.

¹ Notably, it is likely that Initiative 2066 will be subject to legal challenge, as groups have already publicly stated they intend to challenge the measure after certification. Amanda Zhou, *WA passes natural gas initiative; climate advocates plan lawsuit*, SEATTLE TIMES (Nov. 8, 2024) (“Opponents of the initiative had already been planning legal action before the election . . . and intend to file a challenge in superior court after the measure is certified.”). A legal challenge of this nature could require around a year to resolve. *See, e.g., City of Burien v. Kiga*, 31 P.3d 659 (Wash. 2001) (resolving lawsuit regarding initiative enacted November 7, 2000 on September 20, 2001). Because of the present suit’s facial nature, the parties may very well obtain an answer to the EPCA legal questions at issue here well before even the initial suit regarding Initiative 2066’s validity concludes.

1 DATED: December 6, 2024
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